

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

GREKA ENERGY
P. O. Box 6209
Santa Maria, CA 93456

Employer

Docket Nos. 03-R4D5-9318
and 9319

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Greka Energy (Employer).

JURISDICTION

From April 18, 2002, through May 7, 2002, a representative of the Division of Occupational Safety and Health (the Division) conducted an investigation at a place of employment maintained by Employer at 1616 Stinton Road, Santa Maria, California (the site).

On May 10, 2002, the Division issued to Employer two citations alleging serious violations of section 6521(b) [flammable waste gases and vapors]; and section 6524(a) [hazardous areas] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹ The Division proposed civil penalties totaling \$36,000 for the alleged serious violations.

Employer did not file an appeal with the Board until December 11, 2002.

On October 6, 2003, the Board issued an "Order Denying Late Appeal" on the ground that good cause for a late filing of 186 days did not exist.

On November 5, 2003, Employer filed a petition for reconsideration with the Board.

ISSUE

¹ Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

Has Employer established good cause for filing a late appeal?

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

Employer petitions for reconsideration alleging in relevant party that:

The Citation and Notification of Penalty was received from the Ventura District Office on May 14, 2002. The citation remained unopened in our V. P. of Asset Management in box while she was out of state on business. Upon her arrival on May 30, the citation was discovered and opened. On May 30, 2002, a fax was sent to the Ventura division office to request an informal conference and request a 30 day extension to review and resolve the citations. We received no reply from the district office to our request for an informal conference to discuss the citations and hopefully resolve the issues before it became necessary to file an appeal with the Board. On June 11, 2002, Greka Energy sent a letter to the division office and the cashiers office (with payment for all General Citations) and indicated that we were awaiting their (Ventura Division Office) response for an informal conference to discuss the Serious Citations. To my knowledge, there was no response to the initial fax or the follow-up letter for an informal conference by the division office and this marked the end of correspondence with the Division.

This case involves Employer's internal operating procedures being to blame for not initiating the appeal timely. As the Board noted in a December 3, 2003, decision after reconsideration involving this same employer wherein we denied Employer's petition for being 212 days late due to an internal reorganization of the company, "*Kaweah Construction Company*, Cal/OSHA App. 87-9005, Denial of Petition for Reconsideration (Mar. 5, 1987) is the Board's seminal case on good cause when the proffered excuse is that an internal operating procedure caused the late filed appeal. In *Kaweah Construction Company*, the employer asserted it did not file a timely notice of appeal because its field engineer did not tell any supervisor that citations were received and the notice of civil penalty got "lost in the paper shuffle before reaching the President's desk." (*Kaweah*, *supra*, p. 2.) The Board determined that when a document is lost in the paper shuffle in an office, and an untimely notice of appeal results, no good cause exists to justify an extension. (*Ibid.*)

Since *Kaweah*, the Board has consistently held that when a notice of appeal is untimely filed because of internal operating procedures good cause does not exist. (See, *Laselco Pacific*, Cal/OSHA App. 96-9084, Denial of Petition for Reconsideration (July 16, 1996) [citations directed to president of company who was on extended business trip]; *Del Monte Glass, Inc.*, Cal/OSHA App. 87-9009, Denial of Petition for Reconsideration (May 7, 1987); *Cleveland*

Wrecking Company, Cal/OSHA App. 92-9054, Denial of Petition for Reconsideration (Nov. 18, 1992) [branch manager did not properly handle citation]; and *Jesse Aguirre, Farm Labor Contractor*, Cal/OSHA App. 93-9013, Denial of Petition for Reconsideration (June 10, 1993) [appeal misplaced during move of its office].) The Board held in *Jesse Aguirre, Farm Labor Contractor*, *supra*, at p. 2, that it “is the appellant’s obligation to put procedures into place that will ensure that important documents it receives are processed in a timely manner.”

Like the cases cited above, this case presents an example of a failure of an employer’s internal operating procedures. Under the facts presented in this case, the Board believes that it is properly exercising the discretion vested in it by insisting on timely appeals and find that Employer has not established good cause for filing an untimely appeal.

Further, Employer’s desire and efforts to speak with the enforcement agency, the Division, about the citations did not excuse it from filing a timely appeal with the Appeals Board. By statute (Labor Code section 6302, 148 et seq. and 6307) and in practice, the Division and the Appeals Board are separate agencies with distinct and separate responsibilities under the law. The Board finds that Employer’s choice to wait for a response from the Division before filing an appeal fails to show good cause to extend the 15-day filing period required under Labor Code section 6600. The 15-day rule is plainly stated on each citation. As the Board has previously held, the statement on the citation provides adequate notice of the appeal period. (*Brick “N” Wire, Inc.*, Cal/OSHA App. NDN, Denial of Petition for Reconsideration (Feb. 10, 1981).) Further, Employer’s belief that it should not have been cited for the serious violations has no bearing on the issue of whether good cause has been established for the late appeal. *Township Building Services, Inc.*, Cal/OSHA App. 95-9212, Denial of Petition for Reconsideration (Mar. 18, 1996).

DECISION

The Board affirms its Order dated October 6, 2003, denying Employer’s late appeal.

MARCY V. SAUNDERS, Member
GERALD PAYTON O’HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: December 23, 2003